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Legislation Ken

RECORD OF ORAL RESPONSE

BILLS AND LEGISLATIVE REFERRALS

Date: 1/10/83

Office: OMB

Person: Tracey Lawler

Subject: _____

Bill No. : _____

Comment: I informed Ms. Lawler that the Agency had no objection to the legislative proposal of the Department of Defense to authorize DoD personnel to protect certain distinguished persons by amending Title 10 of the United States Code (DoD Draft Proposal #98-47).

STAT

Important - - Testimony

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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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January 5, 1983

X3-00197

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer-

Department of Justice
Department of the Treasury
Department of State
National Security Council
Central Intelligence Agency

SUBJECT: Defense draft proposal 98-47, "To amend title 10, United States Code, to provide for the protection of certain distinguished persons by security forces of the Department of Defense, and for other purposes."

(Similar legislation was reviewed by you during the 97th Congress).

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than WEDNESDAY, FEBRUARY 10, 1983. Phone comments are acceptable.Questions should be referred to Tracey Lawler (395-4710),
the legislative analyst in this office.*Ronald K. Peterson*

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RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

cc: Jim Murr Tom Stanners
John Mitrisin Bob Howard
Frank Seidl



DEPARTMENT OF THE AIR FORCE

WASHINGTON 20330

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OFFICE OF THE ASSISTANT SECRETARY

Honorable Thomas P. O'Neill
Speaker, House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There is forwarded herewith a draft of legislation, "To amend title 10, United States Code, to provide for the protection of certain distinguished persons by security forces of the Department of Defense, and for other purposes."

This proposal is part of the Department of Defense Legislative Program for the 98th Congress. The Office of Management and Budget advises that, from the standpoint of the Administration's Program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

Purpose of the Legislation

The purpose of the proposed legislation is to provide a specific statute that will authorize the use of members of the military departments and civilian employees of the Department of Defense who are assigned to investigative or other security duties for details involving the protection of certain distinguished persons.

The physical protection of distinguished and high-ranking persons is not technically a function of the military departments. Nevertheless, military and civilian personnel assigned to the investigative and security agencies within the Department of Defense have traditionally and for good and increasingly necessary reasons been detailed for protection duties. The Department of Defense is required to assist the Secret Service in providing protection under section 3056 of title 18, United States Code, and related provision of law (see Public Law 90-331; Public Law 94-524). Additionally, the Departments of Justice and State often seek assistance from the Department of Defense in providing protection services. Finally, the Department of Defense does, in appropriate circumstances, provide protection to officials of the Department and to visitors and guests of the Department.

Among those categories of persons who have been afforded this protection are:

a. The President and Vice President of the United States, major candidates for those offices, and designated members of the Presidential families.

b. Distinguished foreign guests of the President or the Department of State.

c. Distinguished foreign guests and high-ranking military personnel, civilian members, and other guests of the Department of Defense.

d. High-ranking individuals involved in the formulation of national security policy, such as the National Security Advisor to the President.

e. Officers or employees of the Department of Defense as designated by the Secretary of Defense or a Secretary of a military department.

Ordinarily, these protection activities have been performed on or in the environs of military installations and aboard military transportation and aircraft. On a military installation, the safety and welfare of all persons is the responsibility of the installation commander. However, distinguished and high-ranking persons often arrive at military installations on extremely short notice so that it is impossible to make detailed arrangements for their protection outside the installation by local law enforcement agencies. In most instances, local law enforcement personnel have had no training in protection activities. Within the military departments there are personnel who have been specifically trained and are experienced in all aspects of distinguished and high-ranking visitor protection. These forces in many cases constitute the only trained personnel available to protect those persons under Department of Defense sponsorship or available to the United States Secret Service and the Department of State when they require temporary assistance in such matters. This activity and assistance has become especially important in view of the events of the past ten years during which we have witnessed an unprecedented increase in domestic and trans-national terrorism; emerging expertise in the use of explosives, firearms, and other means of assassination; a focusing on personalities in diplomacy and world affairs with the person or a very small group of people becoming identified with a particular controversy or cause; and widespread media coverage of world events and disputes, all of which are the type of developments which increase the need for specialized protection.

Presently, except when our personnel are assisting the Secret Service, there is no clear statutory authority for detailing Department of Defense personnel for protection duties outside a military installation. The Department now has adopted a policy of requiring other Federal agencies desiring our assistance with protective services to route such requests through the Secret Service; only if the Secret Service then requests our assistance, under its statutory authority to do so, are Defense Department personnel detailed to assist those other Federal agencies. However, while inherent authority exists to provide protective services for Department of Defense officials and guests, there is presently no express statutory authority for Defense Department personnel to provide such protection to civilian officials of the Department of Defense or to distinguished visitors or guests of the Department. The possible legal consequences of such protective actions by an agent of the Department of Defense, either in defense of his own life or the life of the person being protected, is of concern to the Department. The statutory authority of 18 U.S.C. 3056 and related statutes affords sufficient coverage to our personnel when they are acting at the request of the Secret Service. However, it is considered essential that there also be unambiguous statutory authority to ensure that military and civilian personnel within the Department of Defense are authorized to perform protection services for Department of Defense officials, visitors, and guests. The proposed legislation will provide that statutory authority.

Cost and Budget Data

The enactment of this proposal will cause no increase in the budgetary requirements of the Department of Defense. Protection of Department of Defense officials and distinguished visitors and guests of the Department has been accomplished in the past with available manpower and resources. No increase in protection activities is anticipated as a result of this proposed legislation.

Sincerely,

A B I L L

To amend title 10, United States Code, to provide for the protection of certain distinguished persons by security forces of the Department of Defense, and for other purposes.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled, That
3 title 10, United States Code, is amended as follows:
4 (1) Subtitle A is amended by adding after chapter 81 the
5 following new chapter:

"CHAPTER 82. -- PROTECTION OF CERTAIN DISTINGUISHED PERSONS

"Sec.

"1591. Detail of members of the military departments and civilian employees for protection duty.

"1592. Powers of arrest and detention.

6 "§1591. Detail of members of the military departments and
7 civillian employees for protection duty

8 "(a) Under regulations prescribed by the Secretary of Defense,
9 a member of a military department or a civilian employee of the
10 Department of Defense, who is assigned to investigative, law
11 enforcement, or other security duties with the Department of
12 Defense and is qualified for the use of firearms, may be
13 detailed to protect--

14 "(1) any officer or employee of the Department of Defense
15 designated by the Secretary of Defense or the Secretary of a
16 military department; and

17 "(2) any distinguished foreign visitor or guest of the
18 Department of Defense designated by the Secretary of Defense
19 or the Secretary of a military department.

1 "(b) The detail of a member of a military department or
2 civilian employee of the Department of Defense for protection
3 of an individual identified in subsection (a) is limited to
4 those circumstances in which the Secretary of Defense or the
5 Secretary of a military department has determined that a threat
6 to the welfare or safety of that individual exists.

7 "§1592. Powers of arrest and detention

8 "A member of a military department or a civilian employee of
9 the Department of Defense who is engaged in the performance of
10 duties under section 1591 of this title or who is engaged in the
11 performance of protective duties as authorized by any other law
12 may arrest without warrant or detain in order to deliver into
13 custody any person whom he has reasonable grounds to believe has
14 committed an offense under sections 111, 112, 1114, 1116 or
15 1751 of title 18.".

16 (2) The chapter analysis of subtitle A, and the chapter
17 analysis of part II of subtitle A, are each amended by inserting
18 after the item relating to chapter 81 the following new item:

19 "82. Protection of Certain Distinguished Persons---1591.".

20 Sec. 2. Section 1114 of title 18, United States Code, is
21 amended by inserting "or any member of a military department or
22 civilian employee of the Department of Defense who is detailed for
23 protection duty under section 1591 of title 10, or who is
24 engaged in the performance of protective duties as authorized
25 by any other law" immediately before "shall be punished as
 provided under sections 1111 and 1112 of this title.".

1 Sec. 3. The amendments made by this Act shall be effective
2 on the first day of the third month following enactment.

SECTION-BY-SECTION
ANALYSIS
OF A BILL

"To amend title 10, United States Code, to provide for the protection of certain distinguished persons by security forces of the Department of Defense, and for other purposes."

The first section of the bill amends subtitle A of title 10, United States Code, by adding a new chapter, "Chapter 82 - Protection of Certain Distinguished Persons", which would contain two sections authorizing the detailing of members of a military department and civilian employees of the Department of Defense for protection duty and conferring upon those persons, in certain instances, the power of arrest.

Proposed section 1591 would authorize military personnel and civilian employees of the Department of Defense to be detailed for protection duty if those personnel are qualified to use firearms and are assigned investigative, law enforcement, or other security duties with the Department of Defense. Subsection (a) would provide that those who would be afforded protection are officers and employees of the Department of Defense who have been designated by the Secretary of Defense or the Secretary of a military department and any distinguished foreign visitor or guest of the Department of Defense who has been designated by the Secretary of Defense or the Secretary of a military department. Subsection (b) would limit the furnishing of protection to those cases in which the Secretary of Defense or the Secretary of a military department determines that there exists a threat to the welfare or safety of the person to whom protection is to be furnished. This section would be administered under regulations prescribed by the Secretary of Defense.

Proposed section 1592 would authorize military personnel and Department of Defense civilian employees who are engaged in protection duty under proposed section 1591 of title 10, United States Code, or who are engaged in protective duties authorized under any other law, to arrest without warrant or to detain in order to deliver into custody any person who has violated certain provisions of title 18, United States Code. These provisions of title 18, United States Code, include section 111, relating to assaulting, resisting, or impeding certain officers or employees; section 112, relating to the protection of foreign officials, official guests, and internationally protected persons; section 1114, relating to the protection of officers and employees of the United States; section 1116, relating to the murder or manslaughter of foreign officials, guests, or internationally protected persons; and section 1751, relating to Presidential

assassination, kidnapping, and assault. The arrest or detention could occur if there are reasonable grounds to believe the person being arrested or detained has violated any of these sections. The arrest and detention power which would be granted by section 1592 could be exercised while a military member or civilian employee was engaged in protection duty authorized not only by proposed section 1591 of title 10, but also when authorized by any other law. This provision is primarily designed to cover the situation when military personnel and civilian employees of the Department of Defense are required to assist the Secret Service in carrying out its protective service responsibilities under section 3056 of title 18, United States Code, and related statutes, such as Public Law 90-331 and Public Law 94-524.

The first section of the bill also would make appropriate amendments to the chapter analysis of subtitle A and to the chapter analysis of part II of subtitle A of title 10, United States Code, to reflect the addition of proposed new chapter 82.

Section 2 of the bill would amend section 1114 of title 18, United States Code, which makes criminal the killing of certain officers and employees of the United States. Section 2 of the bill would include military members and civilian employees of the Department of Defense engaged in protection duty under proposed new section 1591 of title 10, United States Code, or engaged in protection duty as authorized by any other law, within the class of persons whose killing is proscribed by section 1114 of title 18, United States Code.

Section 3 of the bill provides that the amendments made by this bill would take effect on the first day of the third month following enactment. This would allow sufficient time for the Secretary of Defense to promulgate regulations necessary to carry out proposed new chapter 82 of title 10, United States Code.